

**REMARKS**

This is in response to the Office Action mailed on October 21, 2004, and the references cited therewith.

Claim 63 has been amended to correct a typographical error. Claims 23-28, 41-45, 59-61, 67-76, 78-80 and 82 are canceled; as a result, claims 19-22, 62-66, 77 and 81 are now pending in this application.

**§112 Rejection of the Claims**

Claims 26-28, 67-76, 79 and 82 were rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

The above claims have been cancelled for the reasons set out below and this rejection is accordingly rendered moot.

**§103 Rejection of the Claims**

Claims 23-28, 41-45, 59-61, 67-76, 78-80 and 82 were rejected under 35 USC § 103(a) as being unpatentable over Kernz (U.S. 6,366,899) in view of Woolston (U.S. 5,845,265).

Applicants respectfully disagree with the rejection of claims 23-28, 41-45, 59-61, 67-76, 78-80 and 82 under 35 USC § 103(a). For example, Applicants deny that Kernz is valid prior art against the present application under 35 USC § 102. Specifically, US application serial number 09/259,189, which matured into US patent number 6,366,899 was filed on February 26, 1999. The present application claims the priority benefit of US application serial number 09/177,726, filed October 23, 1998.

Applicants acknowledged that Kernz claims the priority benefit of US provisional application serial number 60/076,380, filed February 26, 1998. The specification for this provisional application is, however, substantially different from the specification of Kernz.

Specifically, text corresponding to portions of Kernz relied upon in the Office Action do not appear in US provisional application serial number 60/076,380. Accordingly, the portions of Kernz relied upon in the Office Action may be attributed a date no earlier than February 26, 1999, the filing date of Kernz. This date is of course later than the October 23, 1998 priority date of the present application. Applicants have provided a copy of US provisional application serial number 60/076, 380 in an Information Disclosure Statement, filed concurrently with the present response.

Nevertheless, Applicants have elected to cancel claims 23-28, 41-45, 59-61, 67-76, 78-80 and 82 solely for the purpose of expediting the patent application process in a manner consistent with the PTO's Patent Business Goals (PBG) 65 Fed. Reg. 54603 (September 8, 2000). Accordingly, this amendment should not be construed as an acquiescence to the rejection of claims 23-28, 41-45, 59-61, 67-76, 78-80 and 82 under 35 USC § 103(a). Applicants reserve the right to file cancelled claims 23-28, 41-45, 59-61, 67-76, 78-80 and 82 in a continuation application. Of course, this amendment does not narrow the scope of claims 19-22, 62-66, 77 and 81, and should accordingly not be construed as a narrowing amendment.

*Allowable Subject Matter*

Claims 19-22, 62-66, 77 and 81 were allowed over the prior art of record.

### CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at 408-333-9972 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

MARTIN HESS ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
408-333-9972

Date 02/22/05

By

  
Andre L Marais  
Reg. No. 48,095

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 22 day of February, 2005.

Name

Peter Rebuffoni

Signature

